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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

TOO MARKER PRODUCTS, INC., and
IMAGINATION INTERNATIONAL,
INC.,

Case No. 6:12-cv-00834-TC

Plaintiffs/Counterclaim-
Defendants,

v.

CC INTERNATIONAL LLC, and HOT
OFF THE PRESS, INC.,

Defendants/Counterclaim-
Plaintiffs.

**DECLARATION OF TIMOTHY S.
DEJONG IN SUPPORT OF
PLAINTIFFS' MEMORANDUM IN
OPPOSITION TO DEFENDANTS'
MOTION FOR PARTIAL SUMMARY
JUDGMENT**

1. I am an attorney with the law firm of Stoll Stoll Berne Lokting & Shlachter P.C. representing plaintiffs Too Marker Products, Inc., and Imagination International, Inc., in this action. I make this declaration based upon my personal knowledge.

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MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION FOR
PARTIAL SUMMARY JUDGMENT

2. No discovery has been conducted in this case.
3. Additional discovery is necessary to address facts placed at issue by defendants and known only by defendants. These issues are defendants' intent to copy and defendants' knowledge of actual confusion.
4. Defendants have placed their intent in issue by submitting the Declarations of Gary Barbee and Simon Davies. These witnesses deny intent to copy plaintiffs' Copic marker and state several facts regarding the selection of the configuration of the Spectrum Noir marker. Plaintiffs have submitted conflicting evidence, which strongly suggests that defendants selected the Spectrum Noir configuration, and a particular manufacturer of Copic "knock-offs," with the intent to copy Copic.
5. Defendants have also testified that they are not aware of any evidence of actual confusion. In particular, Paulette Jarvey of defendant Hot Off The Press (HOTP) testified that "HOTP is not aware of any instances of actual confusion between either the old or current Spectrum Noir markers with the Copic marker." Plaintiffs have submitted evidence that a customer of HOTP expressed confusion on a website operated by HOTP. The customer asked whether the Spectrum Noir Markers are Copics. Someone on behalf of HOTP, presumably Ms. Jarvey, responded to the confused customer.
6. If allowed to conduct additional discovery, plaintiffs would conduct document and deposition discovery regarding defendants' intent and knowledge of actual confusion.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

DATED this 21st day of December, 2012.

/s/Timothy S. DeJong
TIMOTHY S. DEJONG

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